

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 438 of 1993

in

SPECIAL CIVIL APPLICATION NO 3295 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

DIRECTOR OF TECHNICAL EDUCATION

Versus

JIVABHAI J PATEL

Appearance:

Mr V M Pancholi, AGP for Appellants
MR NIKHIL S KARIEL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE D.P.BUCH

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The appellants have assailed the judgment of the learned Single Judge dated April 30, 1993 rendered in Special Civil Application No.3295/81 by invoking aids of provisions of clause 15 of the Letters Patent.

2. A short spectrum of facts relevant and necessary, may be stated at this stage. The impugned order of the appellant No.1-Director of Technical Education dated 18.8.1981, whereby, one Mr M C Pandya, was ordered to be transferred from Government Technical High School, Dhangadhra to L.D.Engineering College, Ahmedabad, to work as Junior Clerk in the newly created post of Hostel Clerk in the new pay scale of Rs.260-400. The contention of the petitioner No.1, (respondent No.1 herein), has been that he has been working as Hostel Clerk since 18.12.1972 in the L.D. Engineering Hostel, and he has passed F.Y.B.Sc. from M.N. College , Visnagar. The original petitioner no.2, (respondent no.2 herein) has been serving as Hostel Clerk in the same institution since 16.7.1965 and he has also passed his S.S.C. Examinations in the year 1960. The Hostel in L.D.Engineering College is a Government Body under the control of appellant No.2-original opponent no.2, the Principal of the said College, who is a Government Officer. The Rector who is the Head of the Management in the Hostel is appointed from amongst the Senior Professors. The Hostel accommodates 750 students. The staff of the Hostel consists of two Clerks, three Wardens and 17 Peons-cum-Hamals.

3. It has, therefore, been agitated in the original petition by the petitioners that the Clerks and the Peons of this Institution, are not considered as employees of the Government. Petitioner No.1 was appointed with a total meagre salary of Rs.90/- per month, which subsequently came to be enhanced to Rs.245/- per month. So is the case of petitioner No.2, who was appointed with a salary of Rs.150/- per month, which was subsequently raised to Rs.415/- per month. They have also highlighted the type of functions they are doing since the beginning. The representations made by them to the various authorities, including the then Chief Minister for giving them pay scale of Rs.260-400, which was available to the Junior Clerks, were not given any attention and instead, as said earlier, one Mr Pandya was sought to be transferred as Hostel Clerk to L.D. Engineering College

and that is how the original petitioners had to knock the doors of justice by invoking the provisions of Article 226 of the Constitution of India, inter alia, contending that they are Government servants and they are entitled to the pay scale available to the Junior Clerks. They also relied upon a Government Resolution in support of their contention.

4. The appellants - original respondents contested the claims made in the original petition by the petitioners. The main contention of the respondents has been that the petitioners are not Government servants. They are working in Hostel which is managed by the College Hostel Standing Committee and funded out of domus fund of the Hostel of the L.D. College of Engineering, Ahmedabad. Of course, it was contended by the learned AGP for the respondents that the petitioner No. 1 was engaged mainly for the milk distribution to the students. and petitioner no.2 has been engaged for hostel students' work but they are not at all Government servants.

5. After having considered the rival versions and submissions raised before the learned Single Judge, the impugned order came to be recorded whereby, a direction was issued to the appellants-original respondents, that the petitioners' case shall be considered by the respondents or the concerned authority of the State Government in the light of the judgment for absorption as Junior Clerks.

6. We have also considered the facts and circumstances of the case and heard the learned Advocates appearing for the parties. In our opinion, the direction given in para 22 of the impugned judgment is only for consideration of the case of the respondents herein-original petitioners. It is really surprising that in the background of the factual scenario and the relevant proposition of law stated in the impugned judgment, a direction for consideration contained in the impugned judgment is questioned by the appellants. It cannot be said even for a moment that there is no case for consideration of the petitioners' claims. No doubt, during the course of the submissions, it was stated at the Bar that the persons engaged by the petitioners for the students' work in Hostel have been absorbed and regularized and the petitioners' case has not been considered in its correct perspectives, despite giving representations. Without entering into any other further minor or meticulous aspects, we are not inclined to accede to the submissions that the impugned judgment containing directions for consideration of the case of

the petitioners deserves to be quashed and set aside. Needless to state that, apart from the principles of service jurisprudence, the State and its officers, who have avowedly pronounced faith in the welfare State's doctrine, cannot say that a direction for consideration of the case of the petitioners in the factual backgrounds highlighted in the impugned judgment by the learned Single Judge, in exercise of his powers under Article 226 of the Constitution of India, should be assailed by filing Letters Patent Appeal. We find that the direction for consideration of the case of the petitioners does not deserve any interference. The direction was to consider the petitioners' case within a period of three months from the date of receipt of the writ of the Court as directed by the learned Single Judge. We are in the first week of November, 2000. The direction was issued as early as on 30th April, 1993. It is, therefore, necessary, while dismissing this appeal, to observe that the case of the petitioners' shall be considered as directed in the impugned judgment, within a period of two months from the date of receipt of the writ of this court and the petitioners' services shall not be terminated until upto the expiry of two weeks from the date of communication of the decision that may be rendered by the authority pursuing to the direction.

Rule is discharged without any order as to costs.

[J N Bhatt, J.]

7.11.2000 [D P Buch, J.]

msp